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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 5, Original

STATE OF NEW JERSEY,

Complainant,

against

STATE OF NEW YORK and CITY OF NEW YORK,

Defendants,

COMMONWEALTH OF PENNSYLVANIA,

Intervenor.

SUPPLEMENTAL MEMORANDUM OF THE CITY OF NEW YORK IN OPPOSITION TO THE MOTION OF THE CITY OF PHILADELPHIA FOR LEAVE TO INTERVENE.

DENIS M. HURLEY,
Corporation Counsel,
Solicitor for the Defendant-Petitioner,
The City of New York.

JOHN P. McGRATH,
JEREMIAH M. EVARTS,
JAMES J. THORNTON,
RICHARD H. BURKE,
of Counsel.

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Facts

Under date of April 1, 1952, the City of New York moved for leave to file its petition seeking amendments to the decree of this Court entered in 1931 (283 U.S. 805). The proposed amendments will increase the City's authorized diversion from the Delaware tributaries in New York State from the equivalent of 440 million gallons daily to the equivalent of 800 million gallons daily, and will substitute a new formula for the release of water to benefit the lower river in place of the one contained in the decree. The proposed plan of development enabling such increased diversion and the new release formula will be discussed hereafter.

Leave to file the petition was granted by an order entered June 9, 1952. By the same order the Court appointed Hon. Kurt F. Pantzer Special Master. Thereafter the State of New Jersey and the Commonwealth of Pennsylvania filed their respective answers to the petition and, by order entered February 9, 1953, each of those States was permitted to file an amended answer. By the same order the motion of the City of Philadelphia to intervene was set down for hearing on March 9, 1953.

Shortly after the appointment of the Special Master, pre-trial conferences before the Master commenced. Six pre-trial conferences have been held, the first in July, 1952 and the latest on March 2nd. In addition the Master, accompanied by counsel and engineers, viewed the river and its estuary on a five-day trip. At these conferences agreements have been reached respecting a number of important matters; including (1) procedural steps designed to expedite the trial and final disposition of the case, (2) the preparation and submission of testimony and exhibits on behalf of the respective parties, and (3) a schedule of hearings for the cross and redirect examination of witnesses.

At a pre-trial conference, held on December 3rd and 4th, it was agreed that hearings would commence February 16, 1953. Hearings were scheduled to last for one week, adjourn

for a week, and then resume for a week until all testimony had been taken and the hearings concluded. The City of New York agreed to prepare and submit all of its direct case at least one week before the first scheduled hearings. Prior to this understanding and during the month of November, the City had served on counsel and filed with the Master its Statement of the Issues. Early in December it made available to counsel for New Jersey and Pennsylvania a portion of its exhibits. All testimony and exhibits representing the City's direct case were served between December 22, 1952, and February 3, 1953. The major portion of the City's case was served prior to January 26th and ample opportunity has been afforded counsel for the study of the City's direct case and the preparation of the cross-examination of the City's witnesses.

Before discussing the proof offered by the City, we shall describe the basic differences between the new plan of development and the former plan which resulted in the 1931 decree. First, under the present plan of development a much larger reservoir storage capacity is to be constructed by the City. Under the 1931 plan which resulted in the authorized diversion of the equivalent of 440 million gallons daily, the Neversink and East Branch reservoirs provided 178 billion gallons of storage. Of that total, about 148 billion gallons or 83% was to be used for New York's water supply. The remaining 30 billion gallons or 17% was to be used to increase low flows and thereby improve conditions in the lower river. Under the proposed plan of development, the City seeks an authorized diversion of the equivalent of 800 million gallons daily. The Cannonsville reservoir will provide an additional storage capacity of 91 billion gallons, and the total storage of the City's three reservoirs (Neversink, East Branch and Cannonsville) will equal 269 billion gallons. Of that total the City will use not over 198 bilfion gallons or about 74% for its water supply purposes. The balance, at least 71 billion gallons or 26% of the storage, will be used to increase the low flows and still further improve conditions in the lower river.

Second, the release formula proposed in the petition is a substantial improvement over that provided in the 1931 decree inasmuch as the petition formula provides a more timely release and requires a substantial increase in the volume of water to be released during periods of low flow over what would be required under the decree.

The proposed plan of development will not only yield the additional needed water supply for the City but will release during the dry season of the year a substantially greater quantity of water. In fact, the volume of water to be released during periods of low flow will be nearly twice the volume which would be required under the decree formula. Inasmuch as the great bulk of all the water to be impounded in storage is taken from high flows, which are of the least value and often detrimental, the effect upon the lower river of the petition plan for storage and release is most beneficial.

The proof submitted by the City of New York in support of its petition may be briefly summarized as follows:

Hydrographs, covering the period January 1, 1914, to December 31, 1949, inclusive, and showing the recorded daily flow at the gaging stations at Port Jervis and at Trenton, were introduced. These hydrographs portray (1) the natural flow of the river in cubic feet per second on each day as recorded at the gage, (2) the flow that would have occurred at that gage under the release formula provided in the decree or that in the petition and the authorized diversion of the equivalent of 440 million gallons daily, and (3) the flow that would have occurred at that gage under the release formula contained in the City's petition and a diversion of the equivalent of 800 millions gallons daily. These hydrographs show graphically the extent to which the river would have benefited had the petition plan of development and release been in operation.

Testimony and exhibits have also been served respecting the effect of the proposed plan of development and the operation of the petition release formula upon the salinity

of the Delaware Bay and estuary. The substantial volume of water released to the river during periods of low flow will reduce the great range in salinity resulting from natural causes. During periods of low flow the salinity in the river reaches its greatest concentration and the so-called "salt front" is at its northernmost range. Thus, the operation of the petition's release formula will reduce the natural salinity concentration and will push the salt front downstream, thereby benefiting the industrial area bordering the river below Trenton.

Testimony and exhibits have also been served respecting the necessity of the proposed plan of development in order that the future estimated population of the City of New York may possess an adequate and safe supply of pure and wholesome upland water. This testimony respecting future water supply needs of the City of New York, based on estimates of future population and future consumption, shows the necessity for New York to bring in an additional supply of water by the year 1967. The testimony supports the conclusion that the complicated planning and construction of a major addition to water supply requires that construction should begin at least fifteen years before the anticipated needs for the additional supply. Consequently, it is a matter of concern to your petitioner that all proof be taken and the Special Master render his report and recommendations for a decree as expeditiously as possible.

Argument

We are presented with this situation: The trial has been in progress for nearly eight months. During that period the direct case of the City of New York has been submitted and everything possible done to expedite a final determination. The City's testimony and exhibits have been the subject of study for many weeks by the engineers and counsel for the respective parties. They have become

familiar with the issues and the complicated and difficult analyses of the engineering data relating to the hydrology and salinity of the river.

The intervention of a new party represented by counsel and engineers, totally unfamiliar with the issues, testimony and exhibits, can only result in serious delay to the final disposition of this case. As a practical matter, were Philadelphia allowed to intervene, other municipalities along the river might insist upon the same privilege. It is certainly true that every municipality located along the Delaware has an interest in the effect of New York's proposed plan of development upon the river. If Philadelphia is to be allowed to intervene for the purpose of protecting its interest, the City of Chester and other municipalities along the river might claim a similar right. The only distinction would be that Chester and other municipalities would have slept longer in attempting to intervene for the protection of their interests.

The case would seem to fall squarely within those general principles laid down in *Buel* v. *Farmers' Loan & Trust Co.*, 104 Fed. 839 (6th Cir. 1900). There the Court said, at pages 842-843:

> "It seems to be quite well settled that the granting leave to intervene in a case to which the petitioner is not a party is a matter addressed to the discretion of the court, to be exercised upon consideration of all the circumstances of the case. Among other things, the court will regard the seasonableness of the application, and the extent to which those already parties to the suit may be injuriously affected by admitting the new party to assert his claims and have them litigated at that stage of the case. The question for the court will be whether the petitioner has slept upon his rights and unreasonably delayed his application."

The petition of Philadelphia raises no issue different from those raised in Pennsylvania's answer and amended answer. Philadelphia alleges that it was not a party to the original proceeding in this Court because Philadelphia had not then been granted "* * * the broad powers of

home rule which it now has under the Constitution of Pennsylvania, as implemented by the First Class City Home Rule Act * * *'' (par. 2). Even if the Home Rule Charter could be construed to confer a legal right to intervene, despite the fact that the City was already represented by its parent State, Philadelphia could still be properly charged with laches in filing its petition. The Home Rule Charter became effective January 7, 1952, nearly four months prior to the filing of the petition by the City of New York. The petition of Philadelphia was served December 15, 1952, nearly eight months after New York filed its motion.

It is respectfully submitted that the motion for intervention should be denied as a matter of law because the interests of Philadelphia are represented by the Commonwealth as *parens patriae*, and as a matter of discretion for the reasons above stated.

Conclusion

The Application of the City of Philadelphia should be denied.

Dated New York, March 3, 1953.

Respectfully submitted,

DENIS M. HURLEY,
Corporation Counsel,
Solicitor for the Defendant-Petitioner,
The City of New York.

JOHN P. MCGRATH,
JEREMIAH M. EVARTS,
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RICHARD H. BURKE,
of Counsel.

FILED
DEC 31 1953
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1950.

No. 5, Original.

STATE OF NEW JERSEY,
Complainant,

v.

STATE OF NEW YORK and CITY OF NEW YORK,
Defendants,

COMMONWEALTH OF PENNSYLVANIA,
Intervenor.

SEPARATE ANSWER OF THE COMMONWEALTH OF PENNSYLVANIA TO AMENDED PETITION OF CITY OF NEW YORK TO MODIFY DECREE.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1950.

No. 5, ORIGINAL.

STATE OF NEW JERSEY,
Complainant,

v.

STATE OF NEW YORK AND CITY OF NEW YORK,
Defendants,

COMMONWEALTH OF PENNSYLVANIA,
Intervenor.

SEPARATE ANSWER OF THE COMMONWEALTH OF PENNSYLVANIA TO AMENDED PETITION OF CITY OF NEW YORK TO MODIFY DECREE.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now comes the Commonwealth of Pennsylvania (hereinafter called "intervenor"), by Frank F. Truscott, its Attorney General, and files this its separate answer as intervenor to the amended petition (hereinafter called "the amended petition") of the City of New York (hereinafter called "petitioner") to modify decree, and in answer thereto respectfully represents as follows:

1. Intervenor admits that petitioner seeks modification of the decree of this Court as averred in paragraph 1 of

the amended petition, but intervenor objects to the modification of this Court's decree of May 25, 1931, except upon the conditions set forth in paragraph 30 of this answer.

2. Intervenor admits that the decree of this Court was as set forth in paragraph 2 of the amended petition.

3. Intervenor admits the averments of paragraph 3 of the amended petition, subject to the following qualifications:

(a) Intervenor admits that petitioner originally planned to take 600 million gallons per day from the Delaware River or its tributaries and requested the Special Master and this Court to allocate that amount to it as its fair and equitable share. However, the Special Master found and this Court affirmed his finding that the proposed diversion of 600 million gallons daily by petitioner was excessive and would cause serious injury, and consequently reduced New York's permissible diversion to 440 million gallons daily. Pursuant to this limitation, New York modified its then proposed plan and has since proceeded with new plans to take only 440 million gallons of water daily from the Neversink River and the east branch of the Delaware River.

(b) Pennsylvania alone requested the Special Master to recommend to this Court that jurisdiction be retained in order that it might subsequently petition this Court for its fair and equitable share of Delaware River water when a definite plan had been adopted and approved for Philadelphia and southeastern Pennsylvania to move upstream for their water supply, and also to modify the Pennsylvania plan for impounding waters of the Delaware River during periods of high flow and releasing the same during periods of low flow, should such plan require modification in the future.

(c) Both the State of New York and the City of New York filed exceptions to the finding of the Special Master that the diversion of Delaware River water by New York State and City should be limited to 440 million gallons daily upon the ground that such limitation was inadequate to meet the future water needs of the State and City of New York. In support of their exception, both the State and City of New York averred that, although they had made no threat and had no intention or purpose of diverting water in excess of the proposed 600 million gallons daily, yet the time might come when the City of New York or some other municipality or group of municipalities of the State of New York might desire to divert additional waters from the Delaware and that, therefore, they were most anxious not to be bound by the present decree from raising this question at some future date. These exceptions were dismissed by this Court, which affirmed the limitation of 440 million gallons daily recommended by the Special Master.

(d) The report of the Special Master and the opinion and decree of this Court speak for themselves.

4. Intervenor admits that this Court retained jurisdiction over this cause, but denies that such jurisdiction was of the entire controversy, because the finding by the Special Master and this Court that the fair and equitable share of Delaware River water for the State and City of New York should be limited to 440 million gallons daily was definite and final and was not one of the issues left open for future modification.

5. Intervenor admits that since 1931, the consumption and use of water in the City of New York has been increasing, but avers that the consumption and use of water in Philadelphia and southeastern Pennsylvania has been increasing to an even greater extent. It denies that the

consumption and use in the City of New York has reached the critical point as averred in paragraph 5 of the amended petition, and calls attention to the fact that, as the petitioner sets forth in paragraph 8 of the amended petition, it has not yet put into use the facilities constructed pursuant to permission accorded it by this Court's 1931 decree to divert into another watershed the equivalent of 440 million gallons daily from the Delaware River or its tributaries. Further, intervenor avers on information and belief that, by metering, by reduction of leakage and waste and by compelling a more efficient use of water by certain large users of water, petitioner could effect a saving of at least 200 million gallons daily out of its existing water consumption. Further, intervenor avers that, while it is true that the population of New York City increased 5.9% during the ten-year period ending in 1950, the population of the City of Philadelphia increased during the same period 7.3%; that, while the population in the Greater New York Area increased during the same period by 10.7%, the population in the Greater Philadelphia Area increased by 13.3%. Further answering, intervenor avers that, while, undoubtedly, there has been industrial expansion in the New York City area, such expansion is far less than the industrial expansion which has occurred in the Philadelphia area and particularly in the counties adjacent thereto which must depend entirely on the Delaware River and its tributaries for their water supply.

6. Intervenor is without information sufficient to enable it to admit or deny the present dependable, safe yield of the water system of the petitioner, but avers that if the dependable, safe yield is presently 1120 million gallons of water per day, that yield will be increased by 440 million gallons per day when the reservoirs to which reference is made in paragraph 8 of the amended petition are placed in operation as forecast in that paragraph. This will bring the dependable, safe yield of the system up to 1560 million gallons of water per day.

7. Intervenor is without information sufficient to enable it to admit or deny that the actual use of water by petitioner, including water supplied to outside communities since the year 1945, is as set forth in paragraph 7 of the amended petition, but avers that, if the use is as there set forth, the use could have been reduced approximately 200 million gallons per day by metering and other economies as heretofore averred. Further, it avers that the droughts of 1949 and 1950 were extremely unusual and that the rainfall since 1950 has restored to normal the average storage in existing reservoirs.

8. Intervenor admits that the City of New York is constructing the Neversink dam, reservoir and aqueduct which is nearing completion, and the development of the east branch of the Delaware which will be completed approximately in 1956, and that these additional facilities will increase the safe yield of the New York City water supply by 440 million gallons daily.

Intervenor objects to the diversion by New York City out of the Delaware River watershed to the Hudson River watershed of any quantity in excess of 440 million gallons daily, except under the conditions set forth in paragraph 30 of this answer.

9. Intervenor avers that the expectation is without reasonable foundation that the use and consumption of water in the City of New York and outside communities will continue to increase during the succeeding decade so that without the development of future water supplies New York City would experience a severe and steadily intensifying water shortage about the year 1967 onwards.

10. Intervenor denies the averment of paragraph 10 of the amended petition.

11. Intervenor admits that the City of New York prepared plans for the development of the west branch of the

Delaware River by the construction of a dam and reservoir in the vicinity of Cannonsville, Delaware County, New York, and an aqueduct connecting it with the Rondout Reservoir, and that the plans prepared were submitted to and approved by the Board of Estimate for the City of New York by resolution dated January 26, 1950, but intervenor points out that the contemplated development is in violation of the decree of this Court dated May 26, 1931, and calls for a diversion of water from the Delaware River watershed to that of the Hudson River of a quantity of water exceeding New York's fair and equitable share of the water of the Delaware River as determined by this Court in 1931.

12. Intervenor admits that the contemplated project is as described in paragraph 12 of the amended petition, but avers that a dam could be constructed at the proposed location, the breast of which would be 13 feet higher than that proposed, and the storage capacity of which would be such that the damage to the lower Delaware River Valley would be substantially more remote in time than under New York City's present plan, and that the releases of water which could be made from the New York reservoirs would be of substantially greater benefit to the lower Delaware River Valley than those proposed.

13. Intervenor is without information sufficient to enable it to affirm or deny the averment of paragraph 13 of the amended petition.

14. Intervenor is without information sufficient to enable it to admit or deny the averments of paragraph 14 of the amended petition, but avers that, in any event, the release works of New York City, if the prayer of its petition be granted, should be of such capacity as to insure the specified releases under all conditions of reservoir depletion.

15. Intervenor denies the averment of paragraph 15 of the amended petition and again points out that the so-called "third stage of the Delaware project" was definitely ruled by this Court in 1931 to call for the taking by New York of an amount of water from the Delaware River exceeding its fair and equitable share thereof.

Intervenor avers further that there is available to New York City, entirely within the confines of the State of New York, a virtually unlimited supply of water from the Hudson River, the taking of which is feasible, practical and economical and which was recommended to New York City by a committee officially appointed by the mayor of the city for the express purpose of studying New York City's future water supply requirements and the most feasible and economical method of meeting them.

Intervenor further avers upon information and belief that the principal reason for rejecting the recommendation of the Mayor's Committee was the unwillingness of New York City's Board of Water Supply to filter any part of the water supplied to inhabitants of New York City, even though the waters of the Hudson, if taken at the point recommended by the Mayor's Committee, could be readily filtered and would be as safe for consumption as the unfiltered water supplied from New York's other water supply works.

Intervenor further avers that all of the water presently supplied to the City of Philadelphia must be filtered and before filtration is far inferior in quality to the water which would be drawn out of the Hudson if the recommendation of the Mayor's Committee were followed.

16. Intervenor admits that the development of the west branch of the Delaware River as proposed in the amended petition will not substantially affect adversely intervenor's interests for the time being, but avers that with the growth of industry and population in the lower Delaware Valley the time is bound to come when the diversion of as much

as 800 million gallons daily from the Delaware River watershed to the Hudson River watershed would substantially damage intervenor. Intervenor questions whether as of the immediate present New York may, in accordance with principles previously adjudicated by this Court in this case, choose between development of the west branch of the Delaware River and a Hudson River supply; and intervenor avers that even if such choice exists it must be made with a full realization that a complete diversion of water from the Delaware River watershed in excess of 440 million gallons daily is likely, if not certain, to be so injurious to the interests of intervenor that intervenor will, in the future, be required to apply to this Court to have the diversion wholly or partially eliminated or at least to have this Court require that New York City make very much more substantial releases than those which it is now proposing to make.

Intervenor admits that the releases proposed by New York City will benefit the lower river for the time being, but denies that the benefits will be either great or lasting.

Intervenor admits that the waters of the Delaware River and its tributaries are of such quality that if properly conserved and regulated, they will be sufficient to meet all the needs present and future of the municipalities and citizens in the Delaware River Valley but denies that there is sufficient water to permit the diversion to other watersheds of quantities as great as 800 million gallons daily in perpetuity.

17 and 18. Intervenor admits the averments of paragraphs 17 and 18 of the amended petition.

19. Intervenor admits that petitioner seeks a modification of the decree of May 25, 1931 as set forth in paragraph 19 of the amended petition.

20. Intervenor admits the averment of paragraph 20 of the amended petition.

21. Intervenor admits that petitioner seeks a modification of the water release formula set forth in paragraph 20 of the amended petition by substituting the formula set forth in paragraph 21 of the amended petition; but intervenor objects to the modification in the following respects:

(a) The minimum uniform basic rates of flow at the gaging station of the United States Geographical Survey at Montague, New Jersey, should under no circumstances be merely "within practicable limits" but should be a fixed commitment to be a first charge against the water impounded in the New York City reservoirs and to be maintained during every day of every year.

(b) The requirements contained in section A of the proposed release formula should not be limited by the capacity of New York City's release works. On the contrary, New York City's release works should be so constructed as to insure the release of the quantities of water set forth.

(c) If because of the construction of a storage reservoir at Wallpack Bend for the use of intervenor or of intervenor and New Jersey, or for any other reason, it should become impossible in the future to continue to utilize the gage at Montague, New Jersey, New York City should be required to continue to make minimum uniform basic rates of release equivalent to those set forth in section A of the proposed release formula, and these releases also should be mandatory for each day of every year and not merely "as nearly as practicable".

22. The averments of paragraph 22 of the amended petition are admitted subject to the qualifications stated in paragraph 15 of this answer.

23. Intervenor admits that with the modifications requested by it in paragraph 21 of this answer the proposed

water release formula is and would be presently preferable to that contained in the decree of May 25, 1931.

24. Intervenor admits the averment of paragraph 24 of the amended petition.

25. Further answering, intervenor avers that above the Delaware-Pennsylvania State Line, the Delaware River drains an area of 10,444 square miles, of which total, 2389 square miles are within the State of New York, 1979 square miles are within the State of New Jersey, and the remaining 6076 square miles are within the Commonwealth of Pennsylvania. It is apparent that the Commonwealth of Pennsylvania is entitled to paramount consideration in apportioning the waters of the Delaware River.

26. Further answering, intervenor avers that the lower Delaware Valley (from Morrisville to Philadelphia on the Pennsylvania side and from Trenton to Camden on the New Jersey side) is the fastest growing industrial area in the United States at the present time. Great steel mills and other manufacturing concerns have been erected subsequent to World War II and new industries are continuing to be added. All of this industrial growth means a corresponding growth in population. An adequate water supply is of vital importance, and the Delaware River and its tributaries offer the only sources of new supply for this entire region.

27. Further answering, intervenor avers that Philadelphia, which is the third city in population in the United States, has for many years obtained the major part of its water supply from the Delaware River with its intakes below Trenton; that the tremendous increase of industrial activity below Morrisville—Trenton is likely to compel the city to abandon its present intakes and seek its water supply north of Trenton from the main channel of the Delaware River or the tributaries of the Delaware River or both; and

that if the population and industry of the area south of Morrisville and including Philadelphia increases as predicted during coming years the time will come when as much as 800 million gallons daily cannot be diverted to another watershed without retarding the continued growth of this region and without serious injury to its industrial, agricultural and other interests.

28. Further answering, intervenor avers that New York City in its amended petition has not made any allegation whatever indicating that this Court was in error when in 1931 it adjudicated 440 million gallons daily to be New York's fair and equitable share of the waters of the Delaware River.

29. Further answering, intervenor avers that it is informed that New Jersey in its answer will ask permission to divert out of the Delaware River watershed, for commercial, industrial and domestic use, without compensating releases, a quantity of water through the Delaware and Raritan Canal, or otherwise, not exceeding the equivalent of 100 million gallons daily, the word "equivalent" to be understood to mean monthly averages, the highest diversion permissible during any day to be 120 million gallons. In consideration of the fact that New Jersey has enacted a law consenting to the revocation of the compact of 1783 barring the erection of dams across the river and specifically giving Pennsylvania or through it any commission or other public body or municipality singly or collectively designated by the legislature of Pennsylvania permission under certain conditions to construct a storage reservoir at Wallpack Bend, and a diversion dam either at Yardley, Pennsylvania, or at Brookville, Pennsylvania, and has agreed to condemn land in New Jersey for the use of Pennsylvania or its aforesaid agencies to make these projects possible, intervenor makes no objection to the granting of the permission which New Jersey is seeking, subject only to the condition stated in paragraph 30(f) of this answer.

30. Further answering, intervenor states that in view of its inability to show present damage by reason of greater diversions by New York accompanied by substantially greater releases, it does not object to the granting of the permission sought by New York subject, however, to the inclusion in the modified decree of each and all of the following conditions:

(a) The diversion of water in any quantity by New York from the Delaware River watershed shall not be deemed a prior appropriation; and any modified decree in this case shall not be construed as increasing New York's fair and equitable share of the waters of the Delaware River beyond 440 million gallons daily.

(b) Notwithstanding any expenditure made by New York City to construct the Cannonsville Reservoir and appurtenances, intervenor's failure now to object shall never estop intervenor from requesting this Court further to modify the decree in such a way as to prevent damage to intervenor including if necessary the complete discontinuance of the additional diversion for which New York City is now requesting authority.

(c) The release formula set forth in paragraph 21 of the amended petition shall be modified as requested in paragraph 21 of this answer.

(d) This Court in its decree shall define the meaning of "the equivalent of 800 million gallons daily" to mean monthly averages not exceeding 800 million gallons daily.

(e) This Court shall appoint a River Master to police the use of the River and to see to it that the diversions are not exceeded and that the releases are made as ordered by this Court, such River Master to perform such other duties as from time to time the Court shall direct in connection with the use of the

waters of the River and its tributaries by New York, New Jersey and Pennsylvania.

(f) The decree shall continue to contain the substance of paragraph 6 of the present decree as follows:

"6. Any of the parties hereto, complainant, defendants or intervenor, may apply at the foot of this decree for other or further action or relief and this court retains jurisdiction of the suit for the purpose of any order or direction or modification of this decree, or any supplemental decree that it may deem at any time to be proper in relation to the subject-matter in controversy."

31. Unless the foregoing conditions can be included, intervenor vigorously opposes any modification of the decree of May 25, 1931, as requested by New York City, for the reason that the additional diversion sought by New York City will undoubtedly cause serious damage to intervenor's interests in the future.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA,
Intervenor,

By: FRANK F. TRUSCOTT,
Attorney General,

GEORGE G. CHANDLER,
BERNARD G. SEGAL,
Special Counsel and Solicitors for the Commonwealth of Pennsylvania, Intervenor.

Of Counsel:

WM. A. SCHNADER,
HARRY F. STAMBAUGH,
Special Counsel to Intervenor.

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.:*

WM. A. SCHNADER, being duly sworn according to law, deposes and says that he is of special counsel for the Commonwealth of Pennsylvania in the foregoing case, and that he is duly authorized by the Attorney General of the Commonwealth to make this affidavit on its behalf; that he has read the above answer; that the averments thereof as far as they are within his personal knowledge are true and correct; and that as far as they are on information and belief he believes them to be true and correct.

WM. A. SCHNADER.

Sworn to and subscribed before me this 31st day of December, A. D., 1953.

ERNESTINE G. LEWIS,
Notary Public.
My commission expires January 6, 1956.

(SEAL)